

REMARKS

Claims 1 and 5-7 are presented for prosecution in the present application.

35 USC §112 Rejections

Claims 1, 5-8, and 15 have been rejected under 35 USC §112, first paragraph for alleged failure to meet the enablement requirement as to the “continuous thread” limitations in claim 1. According to the rejection, Applicant is allegedly attempting to claim a nonenabled embodiment of a package having continuous threads. Similarly, claims 1, 5-8, and 15 also have been rejected under 35 USC §112, second paragraph as allegedly being indefinite. According to this rejection, it is not clear to the Examiner how the threads are continuous. The rejections are unfounded for the following reasons.

The word “continuous” is defined in *Webster’s Ninth New Collegiate Dictionary*, for example, as “marked by uninterrupted extension in space, time or sequence.” Thus, a “continuous” thread recited in claim 1 is as distinguished from a discontinuous or interrupted thread of the type disclosed in Reiss 4,032,028.

Furthermore, the application as filed clearly shows continuous external threads on the container neck finish in FIGS. 2 and 12-14. Contrary to the assertions with respect to an alleged “break” in the threads 34 shown in FIG. 13, the container threads 34 are indeed continuous as corroborated by FIGS. 2 and 14. FIG. 14 clearly shows that the threads 34, although provided with plateaus, have upper and lower surfaces above and below the plateaus that are not “broken”. Rather, those upper and lower surfaces of the threads are connected to the plateaus by material extending radially outwardly from the container finish 28. This fact is borne out by a review of FIG. 12, which shows the same threads as projecting outward from the finish 28 with no “broken” portions whatsoever.

Similarly, FIG. 2 is a perspective view capturing a portion of both the view of FIG. 12 and the 90 degree clocked view of FIG. 14, wherein the threads are not “broken” in any way, shape, or form.

Likewise, continuous internal threads on the closure skirt are clearly shown in FIGS. 2 and 7-8 of the application as filed. The Examiner has not pointed to, and will not be able to point to, any Figure or any discussion of Applicants’ application that shows or describes “broken” closure threads. This is because the closure threads 64, like the container threads 34, are continuous as one of ordinary skill in the art will readily appreciate from a review of all of the drawing figures. Maintaining a view to the contrary is, at best, speculation or conjecture that is contradicted by clear drawing figures.

Also, claim 5 has been rejected under 35 USC §112, second paragraph as allegedly being indefinite. According to this rejection, it is not clear to the Examiner what the terminology “reverse angled” means. Although Applicants believe claim 5 was definite as written, Applicants have elected to amend claim 5 for increased clarity.

Applicants assert that no new matter has been added, that the claims particularly point out and distinctly claim the subject matter that Applicants regard as the invention, and that the amended claims as well as the claims depending therefrom are allowable. Accordingly, reconsideration and withdrawal of the rejection of claims 1, 5-8, and 15 under 35 U.S.C. § 112 is respectfully requested.

35 USC §103 Claim Rejections

Independent claim 1 and dependent claims 5-7, and 15 have been rejected under 35 USC §103 as unpatentable over Shah 4,375,858 in view of Swartzbaugh 4,399,920. Dependent claim 8 has been rejected under 35 USC §103 over Shah in view

of Swartzbaugh as applied to claim 1, and further in view of Akers 5,449,078. Reconsideration and withdrawal of the rejections is respectfully requested.

A *prima facie* case of obviousness requires a proposed combination of references to teach or suggest all elements of a rejected claim. See *CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). In this case, it is clear that there are unreconciled differences between the proposed combination and Applicants' claims and, thus, the Office Action does not set forth a *prima facie* case of obviousness. Also, under MPEP § 2142, if the Examiner's burden to produce a *prima facie* case of obviousness is not satisfied, then an applicant is under no obligation to submit evidence of nonobviousness.

Shah discloses a container body 19 having a neck portion 16 with a continuous thread 20 and a holding lug 15 with a cam surface 14 that cooperates with a rectangular locking tab 11 on a closure 18 applied to the container body 19.

But Shah fails to disclose, *inter alia*, that the locking tab 11 has a cam surface. Shah also fails to disclose a skirt of the closure 18 including a first portion with an internal surface on which a continuous thread is disposed, and a second portion having an internal surface stepped radially outwardly from the internal surface of the first portion and on which the locking tab 11 and a stop lug are disposed. As noted in the Office Action, Shah also fails to disclose a stop lug on the closure 18.

Swartzbaugh does not remedy the deficiencies of Shah. Swartzbaugh identifies a problem with child resistant packages, including difficulties in removing a closure from a container. As a solution, Swartzbaugh teaches a closure that is more readily removable from a container. Specifically, Swartzbaugh discloses a container 20

having projections 25 with cam surfaces 26 and radial and axial surfaces 27, 28 defining shoulders, and a closure 21 including a skirt 31 having radially inwardly extending rectangular locking lugs 26 and cam lugs 37 with cam surfaces 38. During removal of the closure 21 from the container 20, rotation of the closure 21 causes the cam lugs 27 to engage the projections 25 so as to cam the closure 21 axially upwardly for ready removal of the closure 21 from the container 20.

But Swartzbaugh does not disclose, *inter alia*, a thread on the container 20 or the closure 21, and Swartzbaugh fails to disclose a skirt on the closure 21 having a first portion with an internal surface on which a continuous internal thread is disposed, and a second portion having an internal surface stepped radially outwardly from the internal surface of the first portion and on which the locking lugs 26 and a stop lug are disposed. Swartzbaugh also fails to disclose that the locking lugs 26 have cam surfaces to initially engage the cam surfaces 26 of the container projections 25 for securing the closure 21 to the container 20 in a child resistant manner. Rather, in Swartzbaugh, the lugs on the container skirt are provided to facilitate removal of a closure off of a container, and not to secure the closure on the container. Accordingly, Swartzbaugh teaches away – if not oppositely – from Applicants' claims.

As stated in the MPEP, if any of the cited references teach away from the suggested combination in any material respect or if any of the cited references teach away from an applicant's claims, then the claimed invention is distinguishable over the combination of cited references and the *prima facie* case of obviousness is rebutted. See MPEP § 2141.02(VI) Because Swartzbaugh teaches away from Applicants' claims as set forth above, the *prima facie* case - to the extent it has been made out - is rebutted.

Therefore, the alleged combination of Shah and Swartzbaugh does not disclose, teach, or suggest a closure skirt including a first portion with an internal surface on which at least one continuous internal thread is disposed, and a second portion having an internal surface stepped radially outwardly from the internal surface of the first portion and on which at least one locking lug and at least one stop lug are disposed, as recited in Applicants' amended independent claim 1. The alleged combination also does not disclose, teach, or suggest projection and lug cam surfaces that cooperate to initially engage at least one external radial projection and at least one locking lug for securing a closure to a container in a child resistant manner, as recited in Applicants' amended independent claim 1. Thus lacking multiple significant elements of Applicants' claim 1, the alleged combination cannot possibly yield or render obvious the subject matter of that claim.

Akers does not cure the aforementioned deficiencies of Shah or Swartzbaugh. Akers discloses a container 10 including a camming latch 21 having a cam receiving notch 22, and a cap 11 including a lock lug 20 which is guided into the notch 22 upon rotation of the cap 11 on the container 10.

But Akers fails to disclose, *inter alia*, a thread on the container 10 or the cap 11, and also fails to disclose a skirt on the cap 11 including a first portion with an internal surface on which at least one continuous internal thread is disposed, and a second portion having an internal surface stepped radially outwardly from the internal surface of the first portion and on which at least one locking lug and at least one stop lug are disposed.

For at least these reasons, amended independent claim 1 defines patentable subject matter over all cited references. Claims 5-7 are dependent upon claim 1 and, thus,

all dependent claims define patentable subject matter for at least those reasons that claim 1 is patentable and for the additional points of novelty recited in these dependent claims.

Conclusion

It therefore is believed and respectfully submitted that all claims 1 and 5-7 remaining in the application are allowable at this time, and favorable consideration is respectfully requested.

Please charge any fees associated with this submission to Account No. 50-4417 (Rexam Plastic).

Respectfully submitted,

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